

1 HEARING re [13] Motion to Authorize/Direct a Class
2 Certification pursuant to Rule 23(b)(3) of the Federal
3 Rules of Civil Procedure, made applicable by Federal Rule of
4 Bankruptcy Procedure 7023, comprised of Plaintiff and all
5 persons who worked at or reported to a Facility of Defendant
6 who were terminated without cause on or about June 1, 2016 or
7 within 30 days of that date by Jack A Raisner on behalf of Lori
8 Zaikowski.

9

10 HEARING re [39] ADJ Ex Parte Order to Schedule Hearing on [13]
11 Motion approving bidding procedures for the sale of the
12 Debtor's Oakdale campus, scheduling an auction and a sale
13 hearing Free and Clear of Liens under 11 U.S.C 363(f) by Joseph
14 Charles Corneau on behalf of Dowling College.

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16 HEARING re [74] Order Scheduling Initial Case Management
17 Conference.

18

19 HEARING re [31] Final ADJ Order to Schedule Emergency Hearing
20 on [9] Motion for Authority to Obtain Credit Under Section
21 364(b), Rule 4001(c) or (d) to Obtain Post-Petition Secured,
22 Superpriority Financing Pursuant to 11 U.S.C. Sections 105,
23 361, 362, 363, and 364 and (B) to Utilize Cash Collateral
24 Pursuant to 11 U.S.C. Section 363; Adequate Protection to Pre-
25 Petition Secured Creditors Pursuant to 11 U.S.C. Sections 361,

1 362, 363 and 364 by Joseph Charles Corneau on behalf of Dowling
2 College.

3

4 HEARING re [243] Motion for 2004 Examination of KPMG LLP, by an
5 Authorized Partner or Person with Knowledge of Debtor's
6 Business Transactions and Production of Documents by Anthony C
7 Acampora on behalf of Official Committee Of Unsecured
8 Creditors.

9

10 HEARING re [22] ADJ Motion to Authorize/Direct Pursuant to
11 Sections 105(a) and 363(b) of the Bankruptcy Code and
12 Bankruptcy Rule 9019 for an Order Authorizing the Debtor to
13 Enter Into and Perform Under Plan Support Agreement by Lauren
14 Catherine Kiss on behalf of Dowling College.

15

16 HEARING re [238] Application to Employ Hilco Streambank as
17 Broker for the Debtor in connection with the marketing of
18 certain internet protocol numbers (the IP Addresses), Nunc Pro
19 Tunc to March 14, 2017 by Lauren Catherine Kiss on behalf of
20 Dowling College.

21

22 HEARING re [239] Motion to Sell Property of the Estate Free and
23 Clear of Liens under 11 U.S.C 363(f) Establishing Procedures
24 for the Sale of the Debtor's IP Addresses by Lauren Catherine
25 Kiss on behalf of Dowling College.

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1 HEARING re [240] Motion to Approve and Authorizing
2 Implementation of Procedures for Identification of and
3 Potential Disposition of Certain non-estate Property by Lauren
4 Catherine Kiss on behalf of Dowling College.

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1 P R O C E E D I N G S

2 CLERK: Matter up, Dowling College.

3 THE COURT: Your appearances, please?

4 MR. MCCORD: Good morning, Your Honor. Certilman
5 Balin, by Richard McCord, for ACA Financial Guaranty Corp.

6 MR. SOUTHARD: Good morning, Your Honor. Sean
7 Southard of Klestadt Winters Jureller Southard & Stevens, on
8 behalf of Dowling College.

9 MR. SILVERMAN: Good morning, Your Honor. Kenneth
10 Silverman, of SilvermanAcampora, for the Official Committee of
11 Unsecured Creditors.

12 MR. HOU: Good morning. Chengyu Hou --

13 THE COURT: Can you go up to the --

14 CLERK: Sir, could you go up to the microphone.

15 THE COURT: -- podium, please, sir?

16 MR. HOU: Good morning, Your Honor. Chengyu Hou from
17 Liu, Zheng, Chen & Hoffman, LLP, representing the buyer,
18 Princeton Education Center, LLC.

19 THE COURT: Okay.

20 MR. KLEINBERG: Good morning, Your Honor. Howard
21 Kleinberg with Meyer Suozzi, for the Dowling Board.

22 MR. BERKOWITZ: Good morning, Your Honor. Adam
23 Berkowitz, with Garfunkel Wild, on behalf of UMB Bank as
24 Trustee. I believe my colleague and co-counsel,
25 (indiscernible).

1 MR. YANG: Good morning, Your Honor. Stan Yang from
2 the U.S. Trustee's Office.

3 CLERK: Please state your phone appearance.

4 MR. HAMMEL: Good morning, Your Honor. Ian Hammel,
5 on behalf of UMB Bank, as Trustee.

6 THE COURT: All right. Okay.

7 MR. SOUTHARD: Good morning. Your Honor, again, for
8 the record, Sean Southard, on behalf of Dowling College. Your
9 Honor, this morning we had a number of items on the agenda, the
10 first of which is a general status conference in relation to
11 the case overall. Your Honor, I will try to be relatively
12 brief, given the other matters on the calendar this morning.

13 In terms of next hearing dates before Your Honor, we
14 have a hearing set for April 26, where Your Honor is going to
15 be asked to hear the Debtor's Motion to Extend Exclusivity for
16 120 Days.

17 The next hearing after that, Your Honor, is May 22,
18 and on that date, the Debtor would intend to file a motion
19 seeking approval of the retention of liquidators in relation to
20 the furniture and equipment that the Debtor will seek to sell,
21 as well as a motion in relation to document retention and
22 destruction, and potentially, also, a motion to retain special
23 counsel, the Farrell Fritz firm, in the role of special
24 planning counsel associated with the Brookhaven Campus and the
25 planning that is now taking place associated with that before

1 the Town.

2 Your Honor, in terms of the Brookhaven Campus
3 planning effort and status, my understanding is that we are
4 roughly 60 days or so away from the next phase, which would be
5 appearing before the Town Planning Board, and there are likely
6 to be various meetings between now and then with different
7 parties associated with the Town and with the Debtor and its
8 representatives.

9 Once that Planning Board approves the project as
10 proposed, my understanding is that would be a likely
11 appropriate time to begin marketing the Brookhaven Campus for
12 disposition. So, give or take, we're in the, you know, 60 to
13 90-day window, I think, from that process likely beginning in
14 terms of a market --

15 THE COURT: Is somebody working on that now?

16 MR. SOUTHARD: Yes, Your Honor. We had previously
17 retained the firm of FPM. That is a planning firm. They have
18 been working with the various constituents on the estate side
19 to come up with potential alternatives associated with the
20 expected use and redevelopment of the Brookhaven Campus and
21 have come up with different options, essentially trying to
22 preserve as much optionality for that development as possible
23 with the Town.

24 And at this point, that's essentially where we are,
25 with some concepts agreed to in rough terms. The Town has yet

1 to formally consider that proposal.

2 So, the view would be that the Farrell Fritz firm
3 would assist with that matter in terms of special counsel role.
4 They are particularly qualified and have experience before this
5 Town and Town Planning Board. And so, that is a motion that
6 Your Honor is likely to see in the coming days.

7 Your Honor, I believe that's all the matters we
8 anticipated --

9 THE COURT: You guys also adjourned the cross-
10 certification?

11 MR. SOUTHARD: Yes, Your Honor. That matter was on
12 for this morning, and by agreement between the Plaintiff's
13 counsel and my office, it was decided that it was best at this
14 time to adjourn that cross-certification motion. We do see the
15 potential for dispute about the ultimate scope of the class,
16 and that could potentially impact the extent of damages. And
17 so --

18 THE COURT: You have a bar date in this -- the bar
19 date has passed in this case, right?

20 MR. SOUTHARD: It has, Your Honor.

21 THE COURT: Is there any risk that people who had
22 been expected to be represented by the class, if the class is
23 not certified will find themselves locked out of the case?

24 MR. SOUTHARD: Well, I believe, Your Honor, if either
25 the class proposed counsel or the claimants did not file claims

1 before the bar date, they could potentially be barred. If they
2 did so under any belief that they were being represented
3 already. I can't speak to that.

4 THE COURT: All right.

5 MR. SOUTHARD: I don't know that to be an issue as of
6 yet.

7 Your Honor, in terms of the bar date and the claims,
8 generally, the Debtor is working on reviewing and analyzing the
9 claims pool. That data has been shared with the Creditors'
10 Committee as well. More I understand, it will be doing their
11 own review. There were more than approximately 700 claimants
12 overall between scheduled and filed.

13 Your Honor, the priority claims, as scheduled, were
14 approximately \$500,000, as follows. Currently, there are
15 approximately \$6.3 million. And in a limited review that's
16 taken place thus far, we would expect significant objections to
17 likely lie in the priority claims class.

18 Among other things there were what appear to be full-
19 time faculty members, former full-time faculty members, that
20 filed their entire severance amounts as priority, which has, I
21 think, had the practical effect of dramatically increasing that
22 pool.

23 Your Honor, in terms of general unsecured claims
24 overall, the Debtor scheduled approximately \$4.4 million and
25 there have filed and scheduled a total of about \$11.8 million.

1 So, the reconciliation process and the potential objections
2 process will undoubtedly unfold at some point in the future in
3 the case, but I wanted to give Your Honor a brief overview of
4 what we saw.

5 THE COURT: Okay.

6 MR. SOUTHARD: In terms of other progress in the
7 case, Your Honor, the self-insured medical plan and the
8 information that the Debtor sought from its third-party
9 administrator, we have recently received production associated
10 with the 2004 discovery motion and order that Your Honor
11 entered, and the Debtor is reviewing that information. It may
12 be that we will require some additional assistance in terms of
13 analyzing that by someone with particular expertise in
14 reviewing such claims, but we'll take that matter up with Your
15 Honor to the extent that becomes necessary.

16 In addition, in terms of the Title IV financing, Your
17 Honor, the Debtor has been working with the U.S. Department of
18 Education and various of its representatives in an effort to
19 close out, essentially, its participation, its former
20 participation, in the Title IV programs. That process has
21 taken some time. It's a lot of administrative back and forth,
22 but it is progressing, I think, smoothly at this point.

23 THE COURT: Does the government have any claims
24 against the Debtor?

25 MR. SOUTHARD: The government authority has not yet

1 passed in the case, Your Honor. To my knowledge, they have not
2 yet filed a claim as against the Debtor. There is always the
3 potential for that type of claim, but I'm not presently aware
4 of claims.

5 Your Honor, in addition, the Debtor has recently
6 determined to terminate its 403(b) plan and has prepared the
7 requisite forms, including the 5500 filing for the year and in
8 2015. And it's presently working on audits for 2016 and 2017,
9 and expect to complete the closure of that plan sometime in
10 September or October of this year. Again, no claims are
11 expected to arise out of that as against the Debtor.

12 Your Honor, and then finally, with regard to the
13 residential portfolio, which we've spoken of many times before,
14 the Debtor continues to market and sell those properties in
15 accordance with Your Honor's approved procedures.

16 So, Your Honor, that, from my perspective, concludes
17 the overview of the case status, in addition to those items
18 that are on the calendar for today. Unless Your Honor has any
19 questions or any other party has any comments --

20 THE COURT: Anybody else have any questions or
21 comments at this point? Okay.

22 MR. SOUTHARD: Thank you, Your Honor. So, that
23 brings us, Your Honor, I believe, to the application by the
24 Committee seeking an examination of KPMG in relation to
25 Bankruptcy Rule 2004. My understanding, and I believe it's

1 been docketed, is that there is a stipulation essentially
2 resolving this matter between the Official Committee and KPMG.
3 But perhaps counsel would like to speak to that.

4 MR. SILVERMAN: Yes, Your Honor. We entered into a
5 stip with KPMG. Graciously, we said we'll allow them to
6 complete the tax season. Starting on or about May 1st, they're
7 going to start providing us with rolling discovery. But we've
8 asked them for a lot and they haven't argued.

9 THE COURT: They are the auditors?

10 MR. SILVERMAN: Excuse me?

11 THE COURT: They are the auditors, or were?

12 MR. SILVERMAN: Yes. (indiscernible) auditors, yes.
13 And so, we believe starting in May, we will have a
14 collaborative discovery scheduled. At the moment, we're not
15 anticipating a problem. They consented to the discovery, and
16 my partner, Anthony, and counsel for KPMG went over the topics
17 of discovery. There didn't seem to be much dispute. And so,
18 we're hoping for that to run smoothly and efficiently.

19 THE COURT: There are GAAP financials on this I
20 assume, or not?

21 MR. SOUTHARD: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. SOUTHARD: Your Honor, so the next item on the
24 calendar then this morning is Number 3, and that is the
25 Debtor's application for entry of an order authorizing the

1 retention and employment of Hilco Streambank as broker for the
2 Debtor, nunc pro tunc to March 14. That is Docket Number 238.
3 And related to this motion is the motion that is also on the
4 agenda, which is the Debtor's motion for an order establishing
5 procedures for the sale of the Debtor's IP addresses, Your
6 Honor, and that's Docket Number 239.

7 Your Honor, this motion seeks -- the first motion
8 seeks the employment of Hilco IP Services, LLC, doing business
9 as Hilco Streambank, as broker for the Debtor in connection
10 with the marketing of certain of the Debtor's internet protocol
11 numbers, or IP addresses. And the retention is sought pursuant
12 to Sections 327(a) and 328(a) of the Bankruptcy Code, whereby
13 Hilco Streambank would serve as the Debtor's exclusive broker
14 for purposes of selling these assets, and only these assets.

15 THE COURT: Are the IP addresses under lien?

16 MR. SOUTHARD: Your Honor, the --

17 THE COURT: Or subject to the lien?

18 MR. SOUTHARD: The belief is that the DIP lien, which
19 has been created thus far, covers those IP addresses in
20 relation to the advances made during the bankruptcy case. In
21 addition to that, there was a blanket lien that was granted in
22 the summer prior to the filing date in 2016 that covered
23 certain advances made by the prepetition lenders in August of
24 2016. Those two --

25 THE COURT: And that lien covers IP addresses?

1 MR. SOUTHARD: Those two liens are believed to cover
2 these assets, certainly the DIP lien and the superpriority
3 claim that would be associated with the DIP lien would cover
4 these proceeds now. Your Honor, we have the somewhat unusual
5 circumstance where at this point in time, we don't have a final
6 order in the case associated with financing and cash
7 collateral, and so, certainly, it is possible that there could
8 be some adjustment to the liens that have been granted.

9 So, my understanding in conferring with all the
10 relevant parties in advance of filing the motion is that both
11 the Committee and the secured creditors are agreeable that the
12 proceeds would go to pay down the DIP, to the extent received
13 after the sale. And that's what our motion does state.

14 MR. SILVERMAN: Your Honor, Mr. Southard is right,
15 for the purposes of the sale, we agree that to the extent there
16 are DIP proceeds, they should go through the DIP. We haven't
17 conceded yet what the security lien covers, both pre-and post-
18 petition. We are in negotiate -- discussing with them, not
19 negotiations, over that specific issue. We're still working on
20 it.

21 We do believe that we have a working model with the
22 secured creditors that hopefully will result in a significant
23 carveout to the estate, and result through them in a follow-up
24 DIP order. We're not there yet.

25 Our hope is we will be there for the April 26th

1 hearing. We think that the conversation has advanced
2 significantly, but we have, again, not conceded any --

3 THE COURT: The form of order I'm being given today
4 for the sale of these assets, all of you are in synch that
5 that's okay?

6 MR. SILVERMAN: Yes. Because the DIP has to get
7 there.

8 THE COURT: All right.

9 MR. SOUTHARD: Thank you, Your Honor. I'm happy to
10 give you more of an explanation of the motion, if you desire
11 it, or the IP addresses.

12 THE COURT: No. Consider I had absolutely no idea
13 what it meant when I first read it. I actually spent some time
14 now, I know enough to not ask any intelligent questions.
15 Apparently, you can sell each little address and you've got
16 165,000 of them and this person who actually does this. That's
17 as articulate as I can be.

18 MR. SILVERMAN: I could be just a little bit more
19 articulate.

20 THE COURT: Showoff.

21 MR. SILVERMAN: The addresses have tremendous value
22 because they're in consecutive order. And hopefully, it's
23 because they're in consecutive order that the sale would be
24 successful.

25 THE COURT: Okay. So, anybody want to be heard on

1 this? All right. So, I'll grant the motion to retain the
2 broker, but I have a question about the broker's fees. And
3 I'll grant the motion establishing procedures for the sale of
4 the IP addresses.

5 The broker's commission is a sliding commission?

6 MR. SOUTHARD: Correct.

7 THE COURT: Does it incentivize the broker to sell it
8 in small bunches, or is it a cumulative?

9 MR. SOUTHARD: Your Honor, so the scale of -- there
10 are really just two percentages in terms of commission, and the
11 toggle point or the threshold where that changes from one to
12 the other is basically half the addresses that the Debtor
13 possesses.

14 So, if the Hilco firm was to find a buyer for less
15 than half of the addresses, it would get a 10 percent
16 commission for that sale. If it finds a sale for more than
17 half, half or more, then the commission is just six percent.
18 As I understand their intention --

19 THE COURT: Six percent on the whole or six percent
20 on the overage above the half?

21 MR. SOUTHARD: Six percent on the size of the amount
22 sold, yeah. So, if they sold three-quarters, for instance,
23 which I think, as I understand it from Hilco is unlikely,
24 because typically these addresses are sold in these blocks,
25 consecutive numbered blocks, to obtain the highest value, and

1 the Debtor has what's denominated as a Size 16 address block,
2 which is 65,000, roughly, numbers.

3 When you move down one size to a Size 17 block,
4 that's the roughly half number that would be the toggle point
5 on this sale. And that was something that was negotiated with
6 them. We had discussed the terms and retention with the U.S.
7 Trustee's Office in advance and made some modest changes to
8 those rates.

9 THE COURT: Everybody is okay with this? So, in
10 other words, I could sell half and get 10 percent, but I would
11 drop down to six percent if I sold half plus two IP addresses?
12 I'd lose four percent --

13 MR. SOUTHARD: If you sold --

14 MR. SILVERMAN: Less than half.

15 THE COURT: -- in addition -- a dollar?

16 MR. SOUTHARD: If you sold less than half, Your
17 Honor, you would get -- I think part of the reason for that is
18 that it's very unlikely to sell less than half of the numbers
19 we have here.

20 THE COURT: Okay.

21 MR. SOUTHARD: Unless they're sold --

22 THE COURT: All you guys agree. You're all math
23 wizards and you all agree that this works. Can't wait to see
24 it when it comes back. Court will grant that motion.

25 MR. SOUTHARD: Thank you, Your Honor. Appreciate it.

1 Your Honor, the next matter on the calendar this morning is
2 Docket Number 5 -- or, I'm sorry, Matter Number 5 on the
3 agenda, Docket Number 240, and that's the Debtor's motion for
4 an order approving and authorizing the implementation of
5 procedures for identification of and potential disposition of
6 certain person property.

7 Your Honor, this motion relates to the personal
8 property that remains in Dowling's possession as of the
9 petition date, which amounts to items that are not property of
10 the estate, which we have denominated as non-estate property.
11 And those consist of, among other things, potentially the
12 personal effects of the former faculty members and staff. It
13 also includes potentially restricted assets that may have been
14 gifted to Dowling at various points throughout its history.

15 Your Honor, there have been various inquiries and
16 demands or claims associated with these personal effects and
17 this non-estate property since the beginning of the case. And
18 this motion is really designed to provide more robust notice of
19 the opportunity to make claims associated with those properties
20 and retrieve them, as well as to aid in the identification of
21 potentially restricted assets that, for some reason or another,
22 the Debtor has not previously identified.

23 This is a motion that we discussed extensively with
24 all the parties involved in the case, and including the
25 Charities Bureau for the New York State Attorney General's

1 Office. And they, indeed, gave us comments which we included,
2 in large part, in the motion that we filed and the relief form
3 that we are requesting.

4 Your Honor, we do intend, the Debtor does intend, to
5 dispose of all the assets it owns, including both the campuses,
6 as you're aware we've discussed many times. And so, there is
7 some urgency, particularly with respect to the Oakdale Campus
8 to proceed with this process of identifying and safeguarding
9 assets and otherwise disposing of any assets that are
10 ultimately abandoned --

11 THE COURT: What are the types of assets we're
12 talking about?

13 MR. SOUTHARD: In certain instances, former professor
14 -- former faculty have indicated they've left their work papers
15 and maybe some, you know, dissertation type work that they find
16 very valuable to them personally, but which there is no value
17 to the estate. In addition, it could be on the restricted
18 assets side, you know, a painting that was donated by some
19 donor many years ago --

20 THE COURT: Why isn't that property of the estate?

21 MR. SOUTHARD: It depends on the -- the only -- it
22 would be, unless that donation was made with the restriction as
23 to particular use or purpose, in which case, it would become
24 non-estate property and --

25 THE COURT: Who's going to make that decision?

1 MR. SOUTHARD: If there is a dispute, Your Honor, we
2 would bring that dispute to you.

3 THE COURT: So there's paintings, books --

4 MR. SILVERMAN: Lab equipment.

5 THE COURT: Equipment.

6 MR. SOUTHARD: The process we envision --

7 THE COURT: These were all excluded from the sale?

8 MR. SOUTHARD: That's correct, Your Honor.

9 THE COURT: All right.

10 MR. SOUTHARD: So, Your Honor, (indiscernible) over -
11 -

12 THE COURT: If something is abandoned and it's not
13 property of the estate, it wouldn't be covered by anybody's
14 lien then. I ask, is it covered by anybody's lien?

15 MR. SOUTHARD: If it's not property of the estate,
16 no.

17 THE COURT: Okay.

18 MR. SOUTHARD: I guess there's a point at which it
19 could become property of the estate, if it's abandoned in favor
20 of the Debtor.

21 THE COURT: Leave it alone now. Makes my head hurt.

22 MR. SOUTHARD: Thank you, Your Honor. Again, there
23 are no objections on this motion. We would propose to
24 immediately serve notice broadly on the potentially affected
25 parties, as well as are proposing to publish the notice in the

1 Wall Street Journal, New York edition.

2 THE COURT: Everybody okay?

3 MR. SILVERMAN: The Committee's okay.

4 THE COURT: Okay. We'll grant that.

5 MR. SOUTHARD: Thank you, Your Honor. The next item
6 on the calendar this morning is Number 6 on the agenda, and
7 that is the continued motion of the Debtor to approve continued
8 use of financing, continued use of cash collateral, and
9 borrowing under the Debtor in Possession financing facility.

10 Your Honor, the parties, including the DIP lenders
11 and the Committee, continue to discuss the potential for
12 resolution of various issues, including the terms and the scope
13 of a final Debtor in Possession order. And this morning, there
14 is an agreement to essentially continue, with Your Honor's
15 consent, the existing terms of interim financing approval until
16 the hearing, which is, I believe, scheduled for May 23rd with
17 Your Honor, and we'd asked to extend the authority through the
18 period ended May 26th, which is the Friday of that week.

19 The hope and expectation of the parties involved is
20 that by that point in time, there would be a resolution reached
21 that would hopefully be presented to you Your Honor at that
22 hearing.

23 THE COURT: Anybody want to be heard on this?

24 MR. SILVERMAN: Other than we're working
25 collaboratively and the budget goes through June, I believe, so

1 there won't be any change, Mr. Southard is correct.

2 MR. YANG: Your Honor, with respect to the budget,
3 just had a look at it, we don't have any objection.

4 THE COURT: Okay. We'll continue the interim cash
5 collateral through May 26.

6 MR. SOUTHARD: Thank you, Your Honor. We would
7 intend to submit an order to that effect and an extended budget
8 consistent with our prior practice in this case --

9 THE COURT: When does this authorization end?

10 MR. SOUTHARD: The current authorization ends this
11 Friday, so what I would ask, Your Honor, if there is potential
12 for --

13 THE COURT: I'll give you a bridge until I sign it,
14 in case I don't sign it by Friday.

15 MR. SOUTHARD: Thank you very much, Your Honor.

16 THE COURT: So, whatever that date is, we'll bridge
17 this until the date the Court enters the order, and the order
18 will be good until May 26.

19 MR. SOUTHARD: Thank you, Your Honor.

20 MR. SOUTHARD: Your Honor, the next item on this
21 morning's agenda is the Debtor's motion seeking approval of the
22 sale of its Oakdale Campus. As Your Honor is aware, the Debtor
23 filed a motion on the first day of this case seeking to
24 establish both procedures and to ultimately approve the sale of
25 its Oakdale Campus. That was filed as Docket Number 13.

1 The Debtor is seeking to sell what is an estimated
2 25-acre campus located at 150 Idle Hour Boulevard, which
3 comprises its Oakdale Campus. The sale includes the real
4 property, fixtures and improvements that comprise the Oakdale
5 Campus, but excludes the furniture and equipment.

6 Your Honor, there are certain liens and judgments
7 against the Oakdale Campus. The first lien and security
8 interests are in favor of the Series 2006 bond trustee, which
9 is Bloomington Trust.

10 There is a purported second lien, which is
11 unrecorded, on the Oakdale Campus in favor of the U.S.
12 Department of Education, pursuant to a \$3 million note. The
13 belief of the Debtors is that any mortgage there was never
14 reported and is thus unperfected.

15 And then in addition to those two claims and
16 potential liens, there are mechanics liens that have been filed
17 against that property and certain judgment liens.

18 Your Honor, each of those parties has received
19 notice, both at the outset of this case, as well as the bidding
20 procedures order that was entered in December, and then most
21 recently with the submissions that were made confirming the
22 result of the auction on Friday of this last week.

23 Your Honor, on December 16th, Your Honor did enter an
24 order approving the bidding procedures. That was at Docket
25 Entry Number 111, which set forth the schedule of deadlines in

1 connection with the sale of the Oakdale Campus. Also, on the
2 petition date, the Debtor filed a motion seeking to retain A&G
3 Realty Partners, LLC, and Madison Hawk Partners, LLC, the
4 campus agents, to help market and sell, among other things, the
5 Oakdale Campus.

6 Your Honor the retentions of the campus agents by
7 order, also dated December 16th, and that was Docket Entry
8 Number 114.

9 Your Honor, as was set forth in the campus agents'
10 report dated April 5th, 2017, that was attached as Exhibit 1 to
11 the Declaration of Robert S. Rosenfeld in support of the sale
12 motion filed this last Friday at Docket Entry Number 272, the
13 campus agents have extensively marketed the Oakdale Campus
14 through a combination of means, including direct mailing, press
15 releases, photo brochures, offering memorandum, traditional
16 print, web-based advertising and other promotions and marketing
17 activities.

18 Since the first marketing efforts began, there have
19 been over 5000 unique visitors to the property auction webpage
20 maintained by those agents. The campus agents have also
21 received direct inquiries from 188 parties. Forty-seven of
22 those groups entered into nondisclosure agreements in order to
23 gain access to the diligence information that was maintained by
24 those campus agents. And of those groups, 20 toured and
25 physically inspected the campus.

1 As Your Honor is aware, at the time the sale motion
2 was filed, there was no stalking horse bidder identified. The
3 Debtor did identify a potential stalking horse bidder and
4 ultimately filed an application seeking the approval of certain
5 bid protections in favor of that proposed stalking horse.

6 Around the same time the Debtor was negotiating that
7 agreement, it decided, in consultation with the Creditors'
8 Committee and the DIP lenders, to amend certain of the bid
9 deadlines set forth in Your Honor's bidding procedures order,
10 consistent with the authority granted.

11 The Debtor amended the sealed bid deadline from March
12 27th to March 29th and change the auction date from March 31st
13 to April 4th. The deadline to object to the sale motion stayed
14 the same, and the sale hearing, this morning's hearing, did not
15 change either.

16 What this meant, ultimately, is that sealed bids were
17 due one day before Your Honor heard the stalking horse
18 application, and that Debtor timely received four competing
19 bids, all of which were higher than the stalking horse proposed
20 first price.

21 And at the hearing to consider that stalking horse
22 application, the Creditors' Committee had objected on the basis
23 that those four competing bids were actually better than the
24 proposed stalking horse, and thus, the stalking horse provided
25 no benefit to the estate. Your Honor ultimately denied that

1 stalking horse application.

2 Following that, on April 4th, the Debtor, in
3 consultation with the Creditors' Committee and the DIP lenders,
4 qualified five bidders and conducted the auction at the law
5 offices of Certilman Blain in East Meadow. Each qualified
6 bidder was given a letter designation, Groups A through E,
7 respectively.

8 Prior to the auction and in relation to their bids,
9 three of the qualified bidders advised the Debtor that their
10 intention was to use the Oakdale Campus for various types of
11 educational purposes after they acquired the assets. Two of
12 those qualified bidders advised the Debtor that their intention
13 was to essentially redevelop the Oakdale Campus.

14 The auction commenced at approximately 11:00 AM, with
15 a starting bid of \$9 million. And each of the bidders bid
16 multiple rounds, with breaks at various points in time. At the
17 end, the bids were as follows: The high bidder was for
18 \$26,500,000, submitted by Princeton Education Center, LLC.

19 The second highest bidder was for \$26,100,000,
20 submitted by NCF Capital Limited.

21 The third highest bidder, \$25,800,000, submitted by
22 Ritnand Balved Education Foundation. The fourth highest
23 bidder, \$16,500,000 was submitted by Island Estate Group. And
24 the fifth highest bidder was for \$14,600,00, submitted by the
25 proposed stalking horse candidate, Vanderbilt Palace.

1 Your Honor, each of the three highest bids were made
2 by what we would refer to as an educational end-user. And the
3 bottom two bids, or the lowest two bids, were made by the re-
4 developers, in essence.

5 Your Honor, a copy of the transcript from the
6 auction, which was transcribed by a court reporter, is attached
7 as Exhibit 2 to Mr. Rosenfeld's Declaration filed in support of
8 the sale. Prior to the commencement of the auction, each of
9 those qualified bidders did provide us with proof of financial
10 wherewithal to close up to certain levels of value, as a
11 condition to becoming a qualified bidder.

12 However, given the robust results at the auction,
13 which I just described, the Debtor and the interested parties
14 felt it prudent to further consider financial wherewithal of
15 the top bidders in order to consummate the sale on the higher
16 bids that were made during the auction.

17 As a result, the Debtor closed the bidding on April
18 4th, but kept the auction open and requested from each of the
19 three highest bidders, among other things, proof of financial
20 wherewithal to close on their respective bids and a
21 supplemental deposit, increasing or trueing up the deposit that
22 we had initially received.

23 Your Honor, on April 6th, the Debtor, after extensive
24 consideration by and consultation with representatives of the
25 Creditors' Committee and the DIP lenders, as well as the U.S.

1 Trustee, and by confirmation of the Board of Trustees of
2 Dowling College, determined to close the auction formally and
3 designate Group C, Princeton Education Center, LLC, to be the
4 successful bidder, and Group A, NCF Capital Limited, to be the
5 backup bidder.

6 Your Honor, we believe that the motion this morning
7 is well supported in terms of the Debtor's business judgment.
8 Under applicable law, a proposed sale must represent the
9 reasonable exercise of business judgment on the part of the
10 Debtor in Possession in order to be approved under Section 363
11 of the Bankruptcy Code.

12 As set forth in Mr. Rosenfeld's Declaration, the
13 proposed sale to Princeton represents the sound business
14 judgment of the Debtor and is appropriate in light of the facts
15 and circumstances of this case.

16 After an extensive marketing process and a highly
17 competitive auction, the sale to the successful bidder is the
18 highest and best bid because, among other things, the purchase
19 price was the highest among the qualified bidders and the
20 successful bidder appears eager and capable to close the
21 transaction within the contemplated timeframe.

22 The Debtor believes it's important that the proposed
23 sale be closed as quickly as possible to avoid continuing
24 losses and to otherwise maximize the net value that would be
25 obtained from the sale for the benefit of this estate. Your

1 Honor, the proposed sale to the successful bidder, we believe,
2 accomplishes this.

3 Your Honor, we have also considered the extent to
4 which applicable non-bankruptcy law applies to this sale.

5 Pursuant to Section 363(d) of the Bankruptcy Code, a transfer
6 of property by a not-for-profit entity must be made in
7 compliance with applicable non-bankruptcy law governing such
8 transfer. Outside bankruptcy, in a sale of a not-for-profit
9 corporation seeking to sell all or substantially all of its
10 assets is required pursuant to Sections 510 and 511 of the New
11 York State Not-For-Profit Corporation Law to submit a verified
12 petition to the New York State Supreme Court where the
13 corporation has its principal office for approval of such
14 transaction, on notice to the Attorney General.

15 Your Honor, the State Court would approve such a
16 proposed sale transaction under state law to the extent it
17 finds "the consideration and the terms of the transaction are
18 fair and reasonable to the corporation, and that the purposes
19 of the corporation, or the interests of the members will be
20 promoted." That is a quote, Your Honor, from the standard set
21 forth in Section 511(d) of the New York Not-For-Profit
22 Corporation Law.

23 Last week, the Debtor and its counsel conferred with
24 the New York State Attorney General's Office regarding whether
25 State Court approval would be required, and the Debtor

1 understood -- I should clarify that statement -- regarding
2 whether their office intended to review under Sections 510 and
3 511 of the New York Not-For-Profit Law the proposed sale. And
4 it was our understanding that there was agreement that because
5 the Oakdale Campus does not amount to, or otherwise comprise, a
6 transfer of all or substantially all of the Debtor's assets,
7 that the review under Sections 510 and 511 would not be
8 necessary. In essence, we did not meet the threshold or the
9 trigger for a review application of --

10 THE COURT: Well, it must meet the other standards.

11 It doesn't require review, but in my analyzing the sale, I have
12 to take into consideration those assets, correct, or not?

13 MR. SOUTHARD: Your Honor, I don't think you do, as a
14 technical matter. But our position is that you can and you
15 should find, in any event, that the sale is appropriate in
16 light of applicable non-bankruptcy law.

17 Interestingly, Your Honor, the Attorney General's
18 Office altered that understanding and position on Friday
19 afternoon by telephone when they indicated, essentially, that
20 because Dowling's sale of the Oakdale Campus might amount to
21 substantially all assets, it planned to review, to perform the
22 review, and to make any necessary arguments to this Court,
23 consistent with its oversight role under New York State Law,
24 and --

25 THE COURT: When would they do that? Because your

1 order asked me to sign an order that's effective instantly.

2 MR. SOUTHARD: Indeed, Your Honor. We left that
3 discussion with some disagreements about whether the diligence
4 that they were conducting at this point about the future use or
5 potential future use was appropriate at this time, or whether
6 it was more appropriate in relation to any application process
7 that the proposed purchaser might make to their office to seek
8 a charter, for instance.

9 But nonetheless, what I suggested to their office was
10 that I would attempt to, and indeed did get a telephone
11 conference, Mr. Hou, who is here today representing the
12 purchaser, to answer any questions that their office might have
13 about the purchaser's intentions with regard to the property.
14 We had that conversation on Friday afternoon and I believe it
15 was a productive conversation. Counsel to the proposed
16 purchaser provided them with answers to all the questions they
17 asked, including some follow-up emails later Friday evening,
18 and also on Saturday. And after we --

19 THE COURT: Can you tell me what they were told?

20 MR. SOUTHARD: Absolutely, Your Honor. Mr. Hou
21 explained that his client's intention with regard to future
22 operations were to use the property as a private bilingual K-12
23 school that would ultimately need to be licensed by the state.
24 And frankly, that educational use or purpose was something that
25 Dowling's Board was pleased to know would be consistent, at

1 least in some way, with Dowling's educational mission. And the
2 purchaser's counsel indicated clearly that he had every
3 intention, or their clients had every intention of complying
4 with applicable non-bankruptcy law in relation to its intended
5 future use.

6 But at present, it had not obtained a charter to
7 operate said school and had not taken the formal additional
8 steps to pursue that purpose because, from there's perspective,
9 they had not yet obtained the property from which they would to
10 carry out that activity.

11 THE COURT: But their success at that is irrelevant
12 to the Debtor?

13 MR. SOUTHARD: I believe once the sale closes, that's
14 correct, Your Honor.

15 I think that the Debtor's Board did give some
16 consideration to that future use here. However, this was sort
17 of an easy decision for the parties to make because not only
18 did this bidder have an intended use that was consistent in
19 some way with the educational mission of Dowling, but in
20 addition, they were also the high bidder by \$400,000.

21 THE COURT: But the sale of the property will be
22 completed before the buyer has a charter?

23 MR. SOUTHARD: Correct.

24 THE COURT: And whether that buyer gets the charter
25 and can then use the property as it is currently intended will

1 no longer be an issue for the Debtor, because you would have
2 closed?

3 MR. SOUTHARD: Correct, Your Honor.

4 MR. SILVERMAN: Extending that, Your Honor, it's my
5 understanding that the APA that was signed by Princeton in
6 furtherance of the sale does not have any contingency about use
7 or permit, and that it is a straight, as-is sale,
8 notwithstanding the APA, and that there will be no subsequent
9 look back, if you will, or an intent to look back by the buyer.
10 They're taking it as is. I think it's superfluous to say where
11 it is -- we know where it is. But they're taking it as is.
12 And I think it would be helpful if buyer's counsel confirms
13 that remark in court. I don't believe a buyer is in court,
14 being that they're overseas. But that's my understanding, and
15 I think it's the buyer's and the Debtor's understanding.

16 MR. SOUTHARD: That is the Debtor's understanding.

17 THE COURT: Would counsel be willing to put that on
18 the record?

19 MR. HOU: Yes, Your Honor, I would like to confirm
20 that my clients intend to offer it and do this project as a K-
21 12 school. Because we recently got wind of auction and we
22 intend to close in more than one month. So, there are still
23 some -- how we will own this property and how we'll proceed
24 through the application for all of the charter (indiscernible)
25 from the New York Education Department, this deal not finalized

1 yet. However, the purpose is already very clear for a K-12
2 school.

3 THE COURT: So, you will close --

4 MR. HOU: Yes.

5 THE COURT: -- prior to your having any of the
6 required, or as you believe, the required charters, land use,
7 or any of that? You're basically taking the property as it is
8 now?

9 MR. HOU: Yes. According to the current draft of the
10 asset purchase agreement, which my client already
11 (indiscernible), yes, we are buying this property as is.

12 THE COURT: All right. And that includes, not all
13 the charters, but usage, zoning, everything else?

14 MR. SOUTHARD: It does, Your Honor. And to be clear
15 -- I believe I made the statement at the last hearing on the
16 stalking horse application, but again, for the record day, the
17 asset purchase agreement specifically excludes as an asset to
18 be sold, Dowling's charter, or its accreditation, if any, or
19 any right to operate an educational --

20 THE COURT: I'm not talking about charters. I'm
21 talking about the usage of the property.

22 MR. SOUTHARD: Yes, Your Honor. The usage of the
23 property is as is. We are making no continuing representations
24 as to the existing use of the property.

25 THE COURT: Now, under the New York Not-For-Profit

1 laws -- and I think this satisfies that -- the Court's required
2 to not only look at the -- I believe, Judge Wiles' decision
3 about a year ago, a little less than a year ago, I agree with -
4 - that it is, in a sense, a furtherance of the intent of
5 Dowling's purpose, which is to be an educational facility.
6 That this buyer is buying it with the intent of continuing its
7 usage as an educational facility. And it has agreed to work
8 with the state and any other licensing board, post-closing to
9 ensure that that will happen.

10 MR. SOUTHARD: That's right, Your Honor.

11 THE COURT: Then it's up to those parties. It's not
12 my direction. Now... Okay.

13 MR. SOUTHARD: Your Honor, I think also relevant to
14 complete the analysis is that the intended use of the proceeds
15 of Dowling from the sale, when it closes, is a proper purpose
16 for a not-for-profit corporation, like any corporation, and
17 that is to pay its legitimate debt. I think that is a point
18 that was made by Judge Wiles in his decision and in his
19 analysis, and that same--

20 THE COURT: That the -- I'm not saying what I think I
21 meant, but that determination is not without some dispute --

22 MR. SOUTHARD: Agreed.

23 THE COURT: -- in other cases. That upon a
24 liquidation of a not-for-profit -- unfortunately I have some
25 experience with these days -- that a valid usage of those funds

1 is payment to creditors, pay its bills. There have been a
2 couple of decisions, not any higher court level, that that may
3 be open to debate. But that issue is not in front of me at
4 this point.

5 What is also clear in these cases is that the right
6 of various parties responsible for these not-for-profits,
7 officers and directors of the company, of the entities, under
8 New York law, New York Not-For-Profit Law, especially when you
9 have audited financials have potential liabilities that go
10 beyond what we normally would see in a Subchapter S
11 Corporation, or regular corporation. And at some point, in
12 these cases, that analysis, whatever that analysis is, needs to
13 be presented and explained before the end of the case.

14 I think Attorney General Schneiderman, about a year
15 ago, issued amendments to the not-for-profit laws, which
16 increased the exposure of certain folks. I'm not sure they --
17 a lot of people read them, but increased the potential exposure
18 on parties who may not assume they have liability. I'm not
19 saying they do, but I think these things are all important in
20 my analysis of the case going forward is under -- does keep an
21 eye on New York not-for-profits. We still have other pieces in
22 this case that are going to have to be disposed of -- how we
23 got here, which is true in this case and another one that I
24 have.

25 By the end of the case, and I think it's important in

1 these cases, that we have an understanding of how everybody got
2 to where they got. That doesn't mean anybody's liable. It
3 just means we need an explanation, and there's got to be some
4 transparency in these cases that is different, or may be
5 different, from what you're used to, or any of us are used to,
6 in the more traditional Chapter 11 cases.

7 MR. SILVERMAN: Your Honor, the Committee could not
8 agree more with your last sentiment. We've had conversations
9 with the Debtor as well as with the Committee in terms of
10 pacing the manner in which we look at things, the sale, claims,
11 we had the KPMG, orders for review. We have other discovery
12 that we intend to do. We are cognizant of what the not-for-
13 profit laws require and the context --

14 THE COURT: Yeah, I actually have great faith in the
15 professionals in this case. So, I just wanted to put that on
16 the record. I'm not saying anything that you don't know.

17 MR. SILVERMAN: Not a today issue.

18 THE COURT: No, there's a normal course of time for
19 all these things, and I just wanted to bring it up on the day
20 we're seeking to approve the sale of what is the primary asset;
21 not sole asset, but most visible asset, I think, of this
22 Debtor.

23 Does anybody else wish to be heard on this?

24 MR. SOUTHARD: Your Honor, before -- if you would
25 indulge me, before we do that, I did want to note for the

1 record that there was one objection filed back on December 1st
2 by Powerhouse Paving, which is a judgment creditor of the
3 Debtor. And that objection we've talked about previously at
4 the bid procedures hearing. And in our view, that is really a
5 request for adequate protection and a recognition of the
6 relative priority of Powerhouse Paving's judgment.

7 THE COURT: Yeah, I agree with that.

8 MR. SOUTHARD: Your Honor, so we do not consider that
9 objection, and indeed the objection itself does acknowledge
10 that we are able to sell free and clear of it with its lien to
11 attach to the proceeds.

12 THE COURT: You're basically seeking a waiver of the
13 appeals time period as well, correct?

14 MR. SOUTHARD: Your Honor, we are not seeking a
15 waiver of the 14 day stay in relation to the order today.

16 THE COURT: I thought I -- okay. I thought probably
17 read it wrong, but just check.

18 MR. SILVERMAN: Can we visit for a second? And if I
19 may, Mr. Southard has an awful on his plate today.

20 THE COURT: No, no, no.

21 MR. SILVERMAN: One of the other things that we had
22 discussed as far as the sale, that I'm sure Mr. Southard is
23 going to get to, but it's that we have backup in this.

24 THE COURT: I was going to ask that next.

25 MR. SILVERMAN: I knew you were, so... Occasionally,

1 I like to anticipate. And we are keeping the backup bidder in,
2 pursuant to the procedures. I believe that they have funded
3 the additional deposit. I'm not clear whether they gave the
4 subsequent financial assurances, but I do believe they upped
5 their bid.

6 MR. SOUTHARD: So, back -- with regard to the issue
7 Your Honor raised, you are quite correct. We were seeking and
8 are seeking that waiver. That is in the proposed form of
9 order. It was in --

10 THE COURT: Just tell me why.

11 MR. SOUTHARD: Your Honor, we desire to proceed as
12 quickly as possible towards a closing. The likelihood is that
13 we will not be able to close this transaction in 14 days, but
14 nonetheless desire to proceed as quickly as possible towards a
15 closing.

16 THE COURT: Well, it was in the papers and it's been
17 served on everybody.

18 MR. SOUTHARD: It was, Your Honor.

19 THE COURT: Nobody's objected.

20 MR. SOUTHARD: My apologies for the miscommunication.

21 THE COURT: Has the form of order been shown to the
22 title company?

23 MR. SOUTHARD: It has, Your Honor.

24 THE COURT: Good.

25 MR. SOUTHARD: That has -- I will note on that point

1 that there have been a couple of minor language changes since
2 it was filed -- the proposed order was filed on Friday -- that
3 we have circulated to the parties in interest this morning, and
4 will submit, you know, to Your Honor, assuming those changes
5 are acceptable to the parties in interest. I don't believe
6 them to be material in any way.

7 Now, back on the point that Mr. Silverman was raising
8 about the backup bidder. The Debtor has, with both
9 consultation and consent of the Committee and the DIP lenders,
10 determines NCF to be the backup bidder. We have a signed
11 contract from that backup bidder at the lower bid --

12 THE COURT: And their intended use is basically the
13 same as an educational facility?

14 MR. SOUTHARD: There intended use is for some manner
15 of educational facility, Your Honor, not identical to the
16 intended use of the high bidder. I believe their intention is
17 for a business school to be run from the campus.

18 But to further complete the record, we have an
19 initial deposit from that backup bidder of five percent of
20 their initial \$9 million bid. We do not yet have the trued up
21 or increased deposit that would bring them to the position of
22 five percent on their bid at auction. We have requested that.
23 We do not presently have it.

24 I don't believe counsel is here today to speak to
25 that, but we intend to pursue that with them and address it

1 further before Your Honor, to the extent it becomes necessary.

2 THE COURT: Okay.

3 MR. SOUTHARD: So, Your Honor --

4 THE COURT: Hold it.

5 MR. SOUTHARD: I'm sorry.

6 MR. SILVERMAN: Your Honor, on the 363(m), maybe we
7 would note for the record in the form of a proffer. Attorneys
8 can't testify.

9 THE COURT: I don't think there's an (m) finding in
10 this, is there? I looked for that. There's (h). I didn't see
11 an (m) finding. But it could be that I just can't read. I'm
12 wondering if you're proceeding under the New York Charities
13 whether you get an (m) or you're going under 510 and 512; 510,
14 511, 6 (indiscernible)...

15 MR. SOUTHARD: Your Honor, I don't believe there's a
16 --

17 MR. SILVERMAN: My apologies, Your Honor--

18 MR. SOUTHARD: --specific frame --

19 MR. SILVERMAN: -- it was regarding the
20 (indiscernible).

21 MR. SOUTHARD: Your Honor, counsel has reminded me
22 that in relation to the request for waiver of the 14 days, that
23 they expected the order to run the natural course of 14 days
24 and that they had factored that into their timing for closing.
25 He prefers that the 14 days --

1 THE COURT: You have a buyer who wants the 14 days in
2 it? It's okay with me. I think the misunderstanding is that
3 they don't intend to close within those -- well, you can set
4 the closing date when you want. It's just a question of
5 whether you want the 14 days waived. If you don't, that's okay
6 with me.

7 MR. HOU: So, Your Honor, prior to the auction, we
8 had the clarification with Sean that there will be a 14-days'
9 notice period. Today is the 18th. April 10th is the close
10 date, and around two days there might be a (indiscernible), and
11 after that there would be a 14-day period.

12 So, based on our asset purchase agreement, we have --
13 from that point, we have 30 days to close. So, this auction is
14 a very urgent matter, so all the funding to -- we do not expect
15 any external funding from the financiers. So, this is quite
16 stressful, actually.

17 So, but based on this value, based on the
18 clarification, we made all the funding activities based on this
19 schedule. (indiscernible) there is a request for a waiver of
20 these 14 days, that might cause a lot of disruption to our
21 funding activities.

22 THE COURT: Okay. I don't think it has anything to
23 do with it, but that's fine.

24 MR. HOU: Okay.

25 THE COURT: That's okay. So, you'll have to strike

1 that from the order.

2 MR. HOU: Okay, (indiscernible).

3 MR. SOUTHARD: Your Honor, the only alternative, that
4 I was just discussing with counsel, would be that we might
5 request the waiver, as Your Honor has suggested may be
6 available, and then agree that the closing would not be
7 required within 30 days, but rather 45 days.

8 THE COURT: Well, I'm not going to really -- you
9 can't order waiving the 14 days in a deal that's not going to
10 close for 30 days. That's kind of just avoiding people's
11 rights for no reason, and there has to be a reason to avoid
12 those rights.

13 MR. SOUTHARD: Understood, Your Honor.

14 THE COURT: Based on the dialogue we just had, we're
15 taking that out. So --

16 MR. SOUTHARD: Fair enough.

17 THE COURT: -- delete from the order that provision.
18 And where are we on the (m) provision?

19 MR. SOUTHARD: Your Honor, there is no request in the
20 order for a 363(m) finding. I think one is appropriate. One
21 is available on the record, but the present form --

22 THE COURT: Well, I'm not going to make you live with
23 -- I mean, if you want to amend it... Do people think an (m)
24 finding -- you're the seller... Does anybody want it or not?
25 I don't -- it's not me. I'm not buying it.

1 MR. SOUTHARD: I don't represent the purchaser
2 either.

3 THE COURT: Okay. It is what it is.

4 MR. SOUTHARD: Your Honor, one other item I just
5 wanted to note in terms of the applicable non-bankruptcy law.
6 My understanding is that under 509 of that same not-for-profit
7 corporations law, a sale of less than substantially all assets
8 does not require court approval under non-bankruptcy law. And
9 so, it would be possible for Your Honor to make that finding
10 relative to the Oakdale Campus, not amounting to substantially
11 all --

12 THE COURT: How can I make that finding if I don't
13 know what the remainder of the estate's worth?

14 MR. SOUTHARD: Well, Your Honor, we could give you
15 some testimony in that respect. But we also have the assets,
16 as identified in the schedules and in this -- the record --

17 THE COURT: Well even if the sale were -- even if
18 those sections were applicable, my view of the law is that I
19 would be the one applying that law, not the state court judge.

20 MR. SOUTHARD: Absolutely, Your Honor.

21 THE COURT: And I've said that repeatedly. So, as
22 long as I believe that the record is sufficient, that I'm
23 comfortable signing the order, that it has met those standards.
24 The fact that a state court judge may or may not take another
25 view, my humble role, one, the AG is not telling you you have

1 to, and two, it would have no impact on me. And the order has
2 in it, I believe, Sections 510 -- I think 509, 510, unless you
3 deleted it.

4 MR. SOUTHARD: No, Your Honor. The order contains
5 the provision that essentially determines that the sale did not
6 amount to substantially all assets, and thus that a 510, 511
7 analysis is not required. I think what we had done here this
8 morning is slightly different than that --

9 THE COURT: For me to make that finding -- but you
10 already have an order saying this was not governed by the not-
11 for-profit laws because the sale was for less than --blank.
12 There's nothing in the record that reflects what the total
13 assets are, whether they're right or wrong. And so, perhaps,
14 if you could file an affidavit or something that said maybe
15 this works at the -- whoever it is who's responsible for
16 knowing what this stuff is worth, can give some estimate of
17 value and, therefore, it is the Debtor's view. And no one
18 objects that the assets are not -- do not fall within 510 or
19 509. But I have not nothing on the record that would allow me
20 to enter an order saying it's not applicable because it's not -
21 - it's less than -- I know it's not substantially all, but it's
22 less than the standard. So, I just need some additional data
23 by which the Court can enter that order.

24 MR. SOUTHARD: Your Honor, I am prepared to put on
25 some very brief testimony to that extent --

1 THE COURT: That would work for me.

2 MR. SOUTHARD: -- this morning.

3 THE COURT: I just -- I don't want to get anything...

4 Any little thing can derail something. And something like
5 this, if it gets derailed, it's never going to get back on the
6 track. So, if you've got somebody that you can put on the
7 stand, I don't care if you ask him two or three questions.
8 Just so the record will reflect something and then I can find -
9 - make a finding based on that testimony.

10 MR. SOUTHARD: Thank you, Your Honor. The Debtor
11 would like to call to the stand Emilio Amendola.

12 CLERK: Do you swear to tell the truth, the whole
13 truth, and nothing but the truth, so help you God?

14 MR. AMENDOLA: Yes, I do.

15 CLERK: Please be seated, state and spell your name
16 for the record.

17 MR. AMENDOLA: My name is Emilio Amendola. Emilio is
18 E-M-I-L-I-O. Amendola is A-M-E-N-D, as in David, O-L-A.

19 DIRECT EXAMINATION OF EMILIO AMENDOLA

20 BY MR. SOUTHARD:

21 Q Thank you, Mr. Amendola. When was your firm retained in
22 relation to the Dowling case?

23 A November of last year.

24 Q And did the scope of your firm's retention include
25 marketing and sale of both the Oakdale Campus and the

1 Brookhaven Campus?

2 A Yes, it did.

3 Q Are you aware of any other asset classes or asset groups
4 that Dowling owns?

5 A In addition to Oakdale, there's a 105, roughly 105 acre
6 tract in Brookhaven, (indiscernible) and roughly 20 unsold
7 homes.

8 Q Approximately how large is the Oakdale campus?

9 A Roughly 25 and a half acres.

10 Q And I believe you've just testified that the Brookhaven
11 Campus is roughly 105 acres?

12 A That's correct.

13 Q So, Brookhaven is significantly larger than the Oakdale
14 Campus?

15 A Yes.

16 Q Are you experienced in determining or assessing the value
17 of real estate?

18 A Yes, I am.

19 Q Could you explain your experience?

20 A Yeah, we do quite a bit of valuation work for lending
21 institutions, investors, bankruptcy estates, companies
22 (indiscernible).

23 Q And in relation to your retention for Dowling, did you or
24 your firm assess the value of the two campuses prior to
25 marketing?

1 A Yes, we did.

2 Q Would you say that the Oakdale Campus constitutes more or
3 less than 50 percent of the value of Dowling's real estate?

4 A Less than 50 percent.

5 Q Can you generally describe the marketing of the Oakdale
6 Campus?

7 A There was quite a bit of extensive marketing effort in
8 terms of media, internet, direct communication,
9 (indiscernible). And as you had stated earlier, we had quite a
10 few, 190-ish, 180-ish, different parties requesting
11 information, 20 parties that toured the property, and at the
12 auction had three user bidders and two investment bidders.

13 Q And were you satisfied with the value that was obtained at
14 the auction?

15 A Yes.

16 Q Thank you.

17 MR. SOUTHARD: Nothing further, Your Honor.

18 THE COURT: Anyone else have any questions? Thank
19 you.

20 MR. AMENDOLA: Thank you.

21 THE COURT: All right. It's apparent that Mr.
22 Amendola is an expert and he has testified to the Court that
23 the assets being sold today are less than what they expect the
24 total value of the assets of the estate to be. That is -- and
25 with that, the Court will make a finding, as represented by

1 counsel and as contained in the order.

2 MR. SOUTHARD: Thank you, Your Honor. I would then
3 just note for the record that there are no objections from
4 either prepetition secured lender group, the DIP lenders, the
5 Committee, or the U.S. Trustee, to the Debtor's motion to sell
6 today. And indeed, other than the Powerhouse Paving objection,
7 which I believe should be overruled, the proposed sale is
8 consensual.

9 THE COURT: There's also no objections by the United
10 States government, New York state, or any other governmental
11 agency. The Attorney General's Office has not filed any
12 objections. And, therefore, those parties are deemed to have
13 been on notice and permitted the sale to go ahead without
14 objection.

15 Anybody else? Last time. No one else wishing to be
16 heard, the Court will grant the motion for the sale of the
17 property to the Princeton Education Center for \$26.5 million.

18 MR. SOUTHARD: Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. SOUTHARD: Your Honor, just as a housekeeping
21 matter, I believe there was one other item on today's agenda,
22 and that was the adversary proceeding by (indiscernible), which
23 is the WARN Act litigation. And as I mentioned in earlier
24 remarks, that matter has been adjourned to, I believe, the May
25 23rd date.

1 THE COURT: Is there a case in the East -- over in
2 the district court?

3 MR. SOUTHARD: There is no case.

4 THE COURT: There's no cases that have to be removed
5 here?

6 MR. SOUTHARD: Not --

7 THE COURT: Okay.

8 MR. SOUTHARD: Not in relation to this, Your Honor.
9 This was filed, I believe, on the third day of this case, the
10 third day of --

11 THE COURT: And this is going to track -- you're
12 tracking on this one, the class certification question?

13 MR. SOUTHARD: Correct, Your Honor.

14 THE COURT: Okay. Anybody else? Thank you all.
15 That's a great job. I appreciate it.

16 MR. SOUTHARD: Thank you, Your Honor.

17 MR. SILVERMAN: Thank you, Your Honor.

18 THE COURT: You guys go celebrate. Have a nice
19 holiday.

20 MR. SOUTHARD: You, too.

21 MR. SILVERMAN: You too, Your Honor.

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

5 **Sonya**
6 **Ledanski Hyde**

Digitally signed by Sonya Ledanski Hyde
DN: cn=Sonya Ledanski Hyde, o=Veritext,
ou, email=digital@veritext.com, c=US
Date: 2017.04.24 14:27:31 -04'00'

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8 Sonya Ledanski Hyde

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25 Date: April 24, 2017

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